

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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**Investigation by the Department into the Resale )**  
**Tariff of New England Telephone and Telegraph )**  
**Company d/b/a Bell Atlantic-Massachusetts )**

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**D.T.E. 98-15**  
**Phase I**

**INITIAL BRIEF OF**  
**BELL ATLANTIC-MASSACHUSETTS**

In this phase of the proceeding, the Department is reviewing Bell Atlantic-Massachusetts' ("BA-MA") proposed Resale Tariff filed on July 8, 1998. That tariff contains comprehensive terms, conditions, and charges governing the resale of BA-MA's retail telecommunications services by carriers under §251(c)(4) of the Telecommunications Act of 1996 ("Act"). Numerous carriers intervened in the case, including the Telecommunications Resellers Association ("TRA"), a large national trade association of over 650 carriers. However, no party presented any evidence challenging the reasonableness of any provision of the proposed tariff. Indeed, AT&T B the only intervenor to present a direct case B did not oppose the tariff but sought only to clarify whether the tariff was superceded, in whole or in part, by its interconnection agreement with BA-MA. The Resale Tariff has not, therefore, been contested on the record by any party. The Department should approve the tariff and conclude this phase of the proceeding.

BA-MA will address in this Initial Brief only the tariff-application issue raised in the direct testimony of AT&T. Although TRA and CTC Communications ("CTC") participated in the hearing on August 19, 1998, their questioning of BA-MA's witness, Barbara Crawford, concerned only a handful of tariff provisions. Ms. Crawford explained fully the bases for the proposed terms and how BA-MA would apply them. Her testimony established the reasonableness of the provisions and should satisfy any concerns of TRA and CTC. BA-MA will not attempt in this brief to anticipate what, if any, issues TRA and CTC may address in their initial brief. BA-MA will respond in its Reply Brief once TRA and CTC identify specific issues they wish the Department to consider.<sup>1</sup>

## **I. BACKGROUND**

BA-MA made its initial Resale Tariff filing on January 16, 1998, to comply with Department orders in D.P.U. 94-185.<sup>2</sup> The proposed tariff identified the telecommunications services available for resale and detailed the terms of the business relationship between BA-MA and resellers, including the parties' respective legal rights and responsibilities, the processing of orders, the exchange of information, the protection of reseller information, billing, and various services BA-MA will provide to resellers. As the Department had directed,<sup>3</sup> the tariff contained the interim resale discounts determined in accordance with the Department's Phase 2 Order in the *Consolidated Arbitrations*.<sup>4</sup> BA-MA also filed testimony and cost analyses supporting new discounts.<sup>5</sup> On March 23, 1997, the Department conducted a public hearing and procedural conference at which petitions

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<sup>1</sup> The Hearing Officer requested that the parties include in their briefs specific findings of fact they would like the Department to make (Tr. 1:83). BA-MA will include such findings in its Reply Brief after all issues are identified by AT&T, CTC, and TRA.

<sup>2</sup> *IntraLATA Competition*, D.P.U. 94-185-B at 14 (June 2, 1997) and D.P.U./D.T.E. 94-185-C, at 10 (December 17, 1997).

<sup>3</sup> *IntraLATA Competition*, D.P.U./D.T.E. 94-185-C, at 10.

<sup>4</sup> D.P.U. 96-73-74, 96-75, 96-80/81, 96-83, 96-94.

<sup>5</sup> BA-MA proposed new discounts because the interim discounts were set using an Federal Communications Commission methodology that was struck down by the United States District Court of Appeals for the Eighth Circuit in *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753 (8<sup>th</sup> Cir. 1997).

to intervene were granted for AT&T, CTC Communications Corp., MCI Telecommunications Corporation, Sprint Communications Company L.P., and TRA.

On March 27, 1998, AT&T filed a Motion to Expand the Scope of the Proceeding to include the setting of permanent unbundled network element rates and a Motion to Strike the section of the tariff regarding non-recurring charges and operations support system ("OSS") charges. BA-MA opposed the motions. The Department issued its ruling on May 29, 1998. The Department granted AT&T's Motion to Expand the Scope of the proceeding and restructured the proceeding into three phases. Phase I would address BA-MA's Resale Tariff; Phase II would set permanent resale discounts; and Phase III would set permanent unbundled network element charges. The Department established separate procedural schedules for each phase. The Department also denied AT&T's Motion to Strike. The Department ruled that the OSS, recurring, nonrecurring, service center and complex order charges were being litigated in the *Consolidated Arbitrations*, and the rates set in that proceeding would be included in the Resale Tariff.

Following the May 29<sup>th</sup> Order, the Department requested that BA-MA withdraw the Resale Tariff and refile it so that the Department would have more time to conduct its review. BA-MA complied with the Department's request on July 8, 1998. The Department subsequently suspended the effective date of the new filing until September 18, 1998.

The Department held a public hearing on August 19, 1998. BA-MA's witness was Ms. Crawford, the manager responsible for the development of the Resale Tariff. Ms. Crawford was questioned by the Department, AT&T, CTC, and TRA. AT&T also presented its witness, Joan Hogarth, concerning the application of the tariff to AT&T.

## DISCUSSION

AT&T expressed a concern about how BA-MA's proposed Resale Tariff may affect the resale provisions of the BA-MA/AT&T interconnection agreement. AT&T's interest is purely an academic one because AT&T does not intend to resell BA-MA's services in Massachusetts. AT&T has made it clear that it "will not use resale to enter any markets," and in fact, AT&T has suspended resale operations in all markets (Tr. 1:66). Moreover, as discussed below, AT&T is not seeking a determination from the Department about an issue that is of immediate import, but requests a ruling regarding only a potential future dispute that may arise under the interconnection agreement. The Department should decline to consider AT&T's wholly hypothetical concerns.

There is no dispute between BA-MA and AT&T that the interconnection agreement contains comprehensive terms concerning the provision of resold services and operating practices (so-called non-rate terms) and that those contract terms, and not the tariff provisions, apply if AT&T ever resells BA-MA's services under the existing agreement.<sup>6</sup> See BA Response to ATT 2-1; AT&T Exhibit 1, at 4. The parties also agree that the resale discounts the Department sets in Phase II of this proceeding will be inserted in both the interconnection agreement and the Resale Tariff. See Tr. 1:13-14; AT&T Exhibit 1, at 5. In addition, the parties agree that the rates set by the Department in the *Consolidated Arbitrations* for services associated with resale (such as Call Usage Detail Service and Service Establishment and Maintenance charges) will be inserted in both the interconnection agreement and the Resale Tariff. Thus, at some point, all prices in BA-MA/AT&T agreement and in the Resale Tariff will be identical.

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<sup>6</sup> For example, BA-MA and AT&T negotiated specific terms for the handling of alternatively-billed calls so that AT&T would rate and bill the calls to the end-user customer who accepts billing. The Resale Agreement's treatment of such calls follows the Department's ruling in the BA-MA/Sprint arbitration. See Order dated January 15, 1997, in D.P.U. 96-94, at 6-9. Under the tariff, the rating and billing of alternatively-billed calls is performed by the carrier that serves the end-user customer who is billed. See Resale Tariff (BA-MA Exhibit 1), Section 6.1.1.

The issue on which the parties disagree is whether changes in the discounts or other charges in the Resale Tariff that the Department approves in the future affect the parties' interconnection agreement. AT&T maintains that future price changes would not apply to it because, once the Department sets rates in the *Consolidated Arbitrations* and in Phase II of this case, its prices are then fixed for the duration of that agreement. See AT&T Exhibit 1, at 5. BA-MA's position is that the Department has continuing jurisdiction over resale discount rates and other resale charges and that a Department order approving rates should apply to all carriers involved in the same activities and receiving the same services (Tr. 1:22).

Although BA-MA believes its position is correct, the Department should not decide the matter at this time. AT&T has raised an issue that is purely speculative and cannot be decided in a vacuum. If such a situation actually arises in the future, the particular facts will have to be examined and the interconnection agreement interpreted in light of those specific facts in order to make any reasoned determination. Even AT&T's witness admitted that she wasn't sure how to deal with future rate change ordered by the Department. The following exchange took place during her cross-examination:

Q. What if the Department ordered a change to the rate? Would it be permissible for Bell Atlantic to comply with that order and ask AT&T to insert the new rate into the interconnection agreement?

A. \*\*\*\*\*

Going forward, I'm not quite sure I know the answer to that. The Department's rules have the force of law, and I guess at that point you'd have a discussion and maybe objections from AT&T, since we now have a contract under which we're operating; and to have outside of the contract discount rates being ordered, I'm not quite sure how one would incorporate those rates. (Tr 1:73 and 76)

It is unreasonable for AT&T to ask the Department to reach a decision about future events when its own witness wasn't sure what the correct decision should be. In short, AT&T wants the

Department to prejudge a dispute that does not yet exist and to rule without benefit of any facts.

In addition, if BA-MA and AT&T have a disagreement in the future about how a particular Department decision affects their interconnection agreement, the proper way for the parties to resolve the matter is through the dispute resolution process contained in the agreement. AT&T's witness agreed that this process should be used for disputes arising under the interconnection agreement (Tr. 1:72). AT&T is fully protected if a dispute actually arises and does not need a Department decision here to protect its interests. AT&T is simply attempting to side-step the contractual dispute-resolution process. The Department should not permit AT&T to do so.

### **III. CONCLUSION**

No party has presented any record evidence showing that any provision of BA-MA's proposed Resale Tariff is unreasonable. The tariff should, therefore, be approved. AT&T has raised an issue only about the application of the tariff. For the most part, BA-MA and AT&T are in agreement that the interconnection agreement governs their business relationship. However, AT&T has inappropriately sought to have the Department determine a potential future dispute. The Department should reject AT&T's position.

Respectfully submitted,

New England Telephone and Telegraph Company,  
d/b/a Bell Atlantic

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